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CITY AND COUNTY OF SAN FRANCISCO  
(Including SAN FRANCISCO DEPARTMENT OF BUILDING  
INSPECTION, SAN FRANCISCO BUILDING  
INSPECTION COMMISSION, and  
SAN FRANCISCO PLANNING DEPARTMENT)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

REGAN CARROLL TRUST, Regan  
Carroll, Trustee,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, SAN FRANCISCO  
DEPARTMENT OF BUILDING  
INSPECTION, SAN FRANCISCO  
BUILDING INSPECTION  
COMMISSION, and SAN FRANCISCO  
PLANNING DEPARTMENT,

Defendants.

Case No. C-07-2577 SBA

**CITY'S MOTION TO DISMISS FOR  
LACK OF JURISDICTION AND  
FAILURE TO STATE A CLAIM AND,  
IN THE ALTERNATIVE, FOR  
SUMMARY JUDGMENT  
[FRCP 12(B)(1); 12(B)(6); 56]**

Hearing Date: December 11, 2007  
Time: 1:00 p.m.  
Place: Courtroom 3, 3<sup>rd</sup> Floor  
Trial Date: TBA

Defendant City and County of San Francisco (sued herein as the City and County of San  
Francisco, San Francisco Department of Building Inspection, San Francisco Building Inspection  
Commission, and San Francisco Planning Department; collectively "City") moves the court to  
dismiss the action pursuant to FRCP 12(b)1), 12 (b)(6) or, in the alternative, for summary judgment

1 pursuant to FRCP 56. This motion is made on the grounds that Plaintiff's complaint fails to state a  
2 claim for which relief can be granted, and some or all of the claims set forth in the complaint are not  
3 ripe for review.

4 Specifically, the complaint fails to state a claim for relief pursuant to 42 U.S.C. §1983 in that  
5 Plaintiff has failed to allege facts establishing (1) acts by the defendants (2) under color of state law  
6 (3) depriv[ed][it] of federal rights, privileges or immunities [and] (4) caus[ed][it] damage. Moreover,  
7 the court must apply the highly deferential "rational basis" standard of review to Plaintiff's claims.  
8 Because the proposed project did not comply with existing local law at the time Plaintiff sought its  
9 issuance, the City's refusal to issue the requested permit was rationally based.

10 Plaintiff's claims are also barred on the basis of *res judicata* and collateral estoppel, because  
11 Plaintiff failed to seek state judicial relief from the administrative decisions it now challenges, and  
12 those determinations must now be accorded preclusive effect. In addition, Plaintiff's §1983 claims  
13 are barred by the statute of limitations, since those claims are premised on alleged actions by the City  
14 that Plaintiff claims occurred prior to June, 2001.

15 Alternatively, the complaint sets forth claims which are not ripe for review, since the  
16 Complaint does not allege that the City has taken final action with respect to Plaintiff's building  
17 permit application. In fact, at Plaintiff's request, the City's Board of Appeals continued the hearing of  
18 Plaintiff's claims relating to the City's denial of a building permit for one year, and has taken no  
19 further action thereon.

20 The motion to dismiss is made based on this Motion, the Notice of Motion and the  
21 Memorandum of Points and Authorities filed in this action, the City's request for judicial notice in  
22 support of the motion, the pleadings and papers on file with this Court, and such other matters as may  
23 be presented to the Court at the time of hearing.

1 Dated: October 10, 2007

2 DENNIS J. HERRERA  
3 City Attorney  
4 KRISTEN A. JENSEN  
5 THOMAS S. LAKRITZ  
6 CHRISTINE VAN AKEN  
7 Deputy City Attorneys

8 By: 

9 KRISTEN A. JENSEN

10 Attorneys for Defendant  
11 CITY AND COUNTY OF SAN FRANCISCO  
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